

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 15, 2009 at Knoxville

RUBEN PIMENTEL v. STATE OF TENNESSEE

Appeal from the Circuit Court for Warren County
No. F-9586 Larry B. Stanley, Judge

No. M2009-00668-CCA-R3-PC - Filed January 22, 2010

The petitioner, Ruben Pimentel, appeals from the Warren County Circuit Court's summary dismissal of his petition for post-conviction relief, in which the petitioner had attacked his June 3, 2005 convictions of first degree murder and two counts of aggravated arson. The petition for post-conviction relief was not filed until March 9, 2009, and the post-conviction court dismissed the petition as time barred without appointing counsel and without holding a hearing. Because the petitioner adequately stated and supported claims in his petition that his poor mental health impeded his ability to present a timely post-conviction petition, thereby invoking principles of due process of law to toll the otherwise applicable post-conviction statute of limitations, and because the State of Tennessee concedes as much, we reverse and vacate the order of the post-conviction court and remand the case to that court for the appointment of counsel and the conducting of a hearing to determine the due process issue and any other issues that may follow in due course.

Tenn. R. App. P. 3; Judgment of the Circuit Court Reversed and Remanded

JAMES CURWOOD WITT, JR., J., delivered the opinion of the Court, in which JOSEPH M. TIPTON, P.J., and NORMA MCGEE OGLE, J., joined.

Ruben Pimentel, Only, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; and Lisa Zavogiannis, District Attorney General, for the appellee, State of Tennessee.

OPINION

The petitioner pleaded guilty to the three felony offenses in 2005, agreeing to

an effective sentence of life imprisonment without the possibility of parole plus 25 years. The lengthy post-conviction petition, filed in 2009, raised issues of ineffective assistance of counsel, involuntary and knowing guilty pleas, the withholding of exculpatory evidence, newly discovered scientific evidence, and other issues. In addition, the sworn petition alleged that, due to his mental illness or defect, the petitioner was unable to file his petition within the one-year statute of limitations imposed by Tennessee Code Annotated section 40-30-102(a). He identified the locations of medical records in as many as six healthcare facilities in addition to the records held by the Tennessee Department of Correction and the names of seven prospective affiants who could “support [his] inability to understand [his] legal rights and liabilities at relevant time periods associated with the plea submission hearing and filing of this post-conviction petition.” He alleged a history of psychosis and of various mental debilities.

On March 10, 2009, the day following the filing of the petition, the post-conviction court sua sponte entered an order dismissing the petition based upon the court’s finding “that the [p]etitioner’s statute of limitations has lapsed as required in Tennessee Code Annotated § 40-30-102.” The order contained no other provisions and made no other findings. The petitioner filed a timely notice of appeal. On appeal, the State aptly concedes that the circuit court should have appointed counsel and proceeded to hear the petitioner’s claim that principles of due process tolled the statute of limitations.

Our supreme court in the past has applied principles of due process to allow a post-conviction petitioner to avoid the bar of the statute of limitations. *See, e.g., Seals v. State*, 23 S.W.3d 272, 279 (Tenn. 2000) (“[D]ue process requires tolling of the statute of limitations where a petitioner is denied the reasonable opportunity to assert a claim in a meaningful time and manner due to mental incompetence.”); *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992) (“[A]pplication of the statute may not afford a reasonable opportunity to have the claimed issue heard and decided.”).

In *Williams v. State*, 44 S.W.3d 464 (Tenn. 2001), our supreme court addressed a seemingly time-barred post-conviction petition that claimed that Williams’ trial counsel’s actions deprived him of a meaningful opportunity to seek post-conviction relief. In *Williams*, the court ordered an evidentiary hearing to determine

(1) whether due process tolled the statute of limitations so as to give the appellee a reasonable opportunity after the expiration of the limitations period to present his claim in a meaningful time and manner; and (2) if so, whether the appellee’s filing of the post-conviction petition in October 1996 was within the reasonable opportunity afforded by the due process tolling. To

summarily terminate his claim without further inquiry would be an “abridgement of both direct and post-conviction avenues of appeal--without ever reaching the merits of the appell[ee’s] case--[and] would be patently unfair.”

Id. at 471 (quoting *Crittenden v. State*, 978 S.W.2d 929, 932 (Tenn. 1998)).

We agree with the State that, in the present case, the petitioner has alleged facts and identified sources of confirmatory records that entitle him to a determination whether principles of due process require a tolling of the statute of limitations. *See Seals*, 23 S.W.3d at 279 (observing that “mental incompetency, if established,” will toll the statute of limitations for filing a post-conviction petition); *cf. Antonio L. Saulsberry v. State*, No. W2002-02538-CCA-R3-PC, slip op. at 3 (Tenn. Crim. App., Jackson, Feb. 9, 2004), *perm. app. denied* (Tenn. 2004), *reh’g denied* (Tenn. 2004) (explaining the inadequacies of the petition before the court to call for a due process hearing).

Accordingly, the order of the post-conviction court is reversed and vacated, and the case is remanded to that court, after the appointment of counsel, to conduct a hearing to determine (1) whether due process principles “tolled the statute of limitations so as to give the [petitioner] a reasonable opportunity after the expiration of the limitations period to present his claim in a meaningful time and manner”; and if so, (2) “whether the [petitioner’s] filing of the post-conviction petition in [2009] was within the reasonable opportunity afforded by the due process tolling.” *See Williams*, 44 S.W.3d at 471.

JAMES CURWOOD WITT, JR., JUDGE